

OGC Has Reviewed

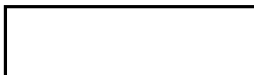
Chen
LHD

Chief, Contacts Branch

22 September 1952

Acting General Counsel

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1. Please send the following teletype to Mr. Lawrence R. Houston

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"a. In re Grove case, C.C.A. 3rd Cir., July 14, 1910, 180 Fed. Rep. 62, apparently leading case. Subject contempt for refusal testify concerning secrets military nature. That case was suit for patent infringement in construction of torpedo boats for U. S. Government. President of defendant manufacturing company was subpoenaed to produce copies of plans, etc. and refused on the grounds to do so would jeopardize the national security. Court tried unsuccessfully to get Secretary of Navy to produce originals of same documents and held president of company in contempt when he refused to yield his copies except in a sealed envelope which he declined to open. C.C.A. reversed contempt judgment, saying:

'There was no absolute refusal to permit the papers to be introduced in evidence. The attitude of the witness in view of the Navy Department's repeated injunctions to keep strictly confidential the information contained in these papers and in view also of the fact that the Secretary of the Navy had filed with the court the above-mentioned statement that the furnishing of the information requested by the court would be detrimental to the interests of the U.S. Government and that the court had recalled its request, was reasonable and highly proper. It does not appear that he has in any wise contemned the authority of the court.'

"b. Grove case cited with approval in U.S. v. HAUGEN, 58 F. Supp. 436, District Court E.D., State of Washington S.D. (1944). Latter case authority for right of army to refuse to disclose secret information, court saying at page 438:

'The determination of what steps are necessary in time of war for the protection of national security lies exclusively with the military and is not subject to court review.'

"c. Grove case also cited as authority in McGLOUGHAN v. Pennsylvania Railroad Company, 170 Fed. 2nd, 129 U.S.C.A. 3rd Cir., decided September 14, 1948, which case, however, does not involve contempt proceedings.

"d. In prosecution for violation of liquor laws where agent of alcohol tax unit on instructions of superior officers failed to disclose name of person who informed him of proposed illegal automobile journey of accused with liquor, court said he would not be held in criminal contempt. U.S. v. KEOWN, 19 F. Supp. 639 at 646.

"e. 18 U.S.C.A. 401 provides basis for court's punishment of witness for contempt. Grove case cited in Annotation."

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